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February 11, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation
WT Docket No. 97-82

Dear Chairman Kennard:

I am writing to encourage the Federal Communications Commission (the "Commission" or "FCC") to take actions in this proceeding that will provide C-Block licensees viable market alternatives.^{1/}

Without additional relief beyond that extended in the *Second Report and Order*, small businesses, minority-owned, and women-owned businesses will continue to be weakened.^{2/} To preserve the investments of C-Block license holders and their investors, the Commission must: (1) postpone the election date until 90 days following completion of its consideration of petitions for reconsideration of the *Second Report and Order* and Part I Revisions; (2) treat options warrants and convertible instruments as nonattributable until exercised; (3) modify C-Block rules by allowing licensees to transfer licenses to non-designated entities without penalty; (4) modify the C-Block options presented in the *Second Report and Order* to preserve existing C-Block investment by permitting retention of all licenses within an MTA under the amnesty option; and (5) continue to defer installment payments.

^{1/} See *Second Report and Order and Further Notice of Proposed Rulemaking*, Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, FCC 97-342 (rel. October 16, 1997) ("*Second Report and Order*").

^{2/} The combined investment of the minority- and women-owned companies in up-front payments for C-Block licenses is \$126,450,800, which potentially could mean a \$63,225,400 forfeiture if half of the licenses were disaggregated under the Commission's disaggregation option or a \$37,935,240 forfeiture under the Commission's prepayment option.

The Commission is legally bound to revisit its regulations in these circumstances to ensure that the regulations continue to serve the public interest, since the underlying circumstances upon which the regulations are premised have changed.^{3/}

Overview-The Need for Change

To date, the roll-out of PCS generally has been limited to the largest of telecommunications carriers.^{4/} While a few C-Block licensees are operational, with the exception of Cook Inlet,^{5/} none of the women- or minority-owned companies are among them. Moreover, the bankruptcy filing of Pocket Communications followed by the bankruptcy filing of General Wireless, Inc. ("GWI") have created greater uncertainty.^{6/} Market analysts indicate that more C-Block players likely will follow Pocket and GWI. Thus, it is likely that there will be

^{3/} See *Geller v. FCC*, 610 F.2d 973, 979-980 (D.C. Cir. 1979) (if underlying circumstances change, the Commission is compelled to revisit the applicable regulations to ensure that the public interest continues to be served).

^{4/} See *Corporate Financing Week*, Vol. XXIII, No. 21 p.1 (June 2, 1997) ("Some market observers argue that telecommunications powerhouses such as AT&T Corp. and Sprint Corp. have already moved to establish alliances and build out PCS systems in the U.S., making smaller, lesser-known operators risky bets.").

^{5/} See *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 ¶¶ 42-45 (Granting an exception to the attribution rules which permitted Cook Inlet to participate in the C-Block auction despite its substantial asset holdings).

^{6/} During its Chapter 11 proceedings, GWI brought suit against the Commission alleging that the time differential from the conclusion of the C Block bidding to the time GWI received the conditional grant of the licenses was significant and had a negative impact on the value of the licenses. Accordingly, GWI claimed that the transaction was a Fraudulent Transfer Under 11 U.S.C. § 548(a)(2). GWI also alleged equitable subordination under 11 U.S.C. § 510(c) and avoidance under § 544(b), which incorporates relevant state fraudulent transfer laws. GWI argued that the actions and inactions of the Commission detrimentally affected both the creditors and interest holders of GWI. It is far from clear that the Commission will succeed in having GWI's claims dismissed.

While Pocket Communications ("Pocket") did not bring a complaint directly against the Commission, within the bankruptcy proceeding, Pocket filed a motion for an expedited hearing to determine the value of the Commission's secured claim on Pocket's licenses. In the motion, Pocket notes that the Commission asserts a claim for approximately \$1.3 billion. However, Pocket argues that the court should determine the Commission's secured claim to be in the amount of \$300 million.

further constriction of the limited funds available for C-Block investment. Unless relief is provided from certain C-Block restrictions as described herein, licensees will be unable to attract the investors and entities necessary to build, operate and market systems to compete with the larger cellular and A and B Block PCS companies.^{7/}

Even industry developments that have been heralded by the FCC as monumental events will not aid C-Block licensees. For example, although the World Trade Organization Telecommunications Agreement, adopted in February 1997 (the "WTO Agreement"), holds the promise of greater foreign competition and investment, for C-Block PCS businesses seeking to compete in the domestic wireless market, this only adds foreign entities and foreign-financed entities to the list of well-financed companies against whom they must compete. Indeed, such beneficial developments *cannot* bolster C-Block licensees because of restrictive C-Block ownership, attribution and transfer restrictions which apply to foreign and domestic entities alike and serve as another barrier to C-Block investment.^{8/}

For those women- and minority-owned interests to survive and for the Commission to honor its statutorily imposed duty, the Commission should modify the C-Block rules to provide licensees the opportunity to attract the interest of domestic and international strategic investors/buyers.

I. The FCC Should Postpone The Election Date Until 90 Days Following The Completion Of Its Consideration Of Petitions For Reconsideration Of The *Second Report and Order* And Part I Revisions.

The Commission has established February 26, 1998 as the deadline by which each C-Block licensee must notify the Commission of the restructuring option it elects. Presumably, the Commission will adopt a reconsideration order prior to that time. Yet, if the FCC is to provide

^{7/} A and B Block PCS licensees are well-capitalized and were adequately supported by the investment community. (InterCel, Sprint Spectrum, Western Wireless and Aerial Communications have all successfully completed public offerings.) Moreover, D, E and F Block licensees do not have the same capital demands as C-Block licensees, and have also generally benefitted from weaker prevailing spectrum market prices at the time of auction.

^{8/} *Id.* A, B, D, and E Block PCS licensees, as well as cellular, SMR and newly-licensed Wireless Communications Service ("WCS") operators all will benefit directly from these developments, thereby enhancing their capital aggregation and market shares. Designated Entity PCS businesses constrained by inflexible ownership, attribution and transfer restrictions, however, will be unable to offer potential partners and investors attractive investment or acquisition options that promise comparable returns.

C-Block licensees an adequate time to consider the revised options, then the Commission must postpone the election date further.^{9/}

It is impossible for C-Block licensees to make informed decisions on the options in the *Second Report and Order*, as amended on reconsideration, while the resolution of a number of related issues raised in the FCC's Part I Proceeding is pending.^{10/} The *Third Report and Order and Second Further Notice of Proposed Rulemaking* requests comments by February 6, 1998, and reply comments by February 17, 1998. This means that the Part I Proceeding will likely remain open until at least early March. Because interested persons will have little or no time to review the Commission order, which will in all likelihood be adopted after February 26, the deadline for decisions on finance restructuring options should be postponed until ninety (90) days after release of the reconsideration order and resolution of the remaining Part I Proceeding issues.

The Part I Proceeding raises significant considerations for C-Block licensees that may factor into their decision on the proper vehicle for restructuring the debt owed on their licenses. For example, the Part I Proceeding adopts final rules that provide two automatic 90-day grace periods for existing licensees paying installment payments. This six-month grace period may materially affect a licensee's decision with respect to which restructuring option it adopts. The rules proposed in the Part I Proceeding may have an equally significant potential impact. For example, among the rules proposed are rules governing the attribution of gross revenues of investors and affiliates for designated entities. Specifically, for future auctions the Commission is considering the adoption of a "controlling interest" standard similar to that in place for LMDS, in which only the gross revenues of principals of the applicant who exercise both *de jure* and *de facto* control and their affiliates will be attributed to the applicant. If such a rule change were to be adopted, it could enhance the ability of C-Block licensees to obtain investment funds, an outcome that would obviously factor in their debt restructuring analysis. In contrast, forcing

^{9/} Many of the parties in this proceeding have made similar recommendations. See, e.g., Petition for Reconsideration of Carolina PCS I Limited Partnership, Horizon Personal Communications, Inc., MFRI Incorporated, NextWave Telecomm Inc., Michigan PCS Consortium and Wireless 2000, WT Docket No. 97-82, (November 24, 1997); Opposition of Duluth PCS, Inc., St. Joseph PCS, Inc. and West Virginia PCS, Inc. and Polycell Communications; and Third Kentucky PCS, WT Docket No. 97-82, (December 23, 1997) (recommending an extension of the election deadline for reasons that remain valid despite the extension until February 26, 1998).

^{10/} See *Third Report and Order and Second Further Notice of Proposed Rule Making*, (Amendment of Part I of the Commission's Rules -- Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz), FCC 97-413, Released December 31, 1997 ("Part I Proceeding").

licensees to make permanent choices, in advance of related decisions that bear on the evaluation of proposed options, undermines the FCC's efforts to provide relief for distressed C-Block entrepreneurs.^{11/}

II. The FCC Should Modify C-Block Rules To Facilitate Additional Capital Accumulation By Existing Licensees.

While deferral of the election date will permit C-Block licensees to make informed decisions regarding the future of their businesses, the market circumstances of C-Block licensees also require the FCC to modify or waive its rules to provide licensees a realistic hope of growing their businesses. Certain C-Block PCS rules restrict R&S and other C-Block licensees from effectively operating these licenses or finding larger strategic entities, who have sufficient economies of scale and scope, with which to cooperate. Accordingly, R&S recommends that the Commission relieve C-Block licensees from existing ownership and transfer restrictions so that they can compete in the dramatically consolidated wireless marketplace.

As a result of unprecedented consolidation, the sudden availability of additional spectrum and the unintended consequences of C-Block financing restrictions, it is much more difficult to find willing strategic partners and investors. The Commission, therefore, should modify its designated entity C-Block rules as follows: (1) release designated entities from the penalty and transfer rules that prevent them from returning the licenses to the Commission or transferring their licenses to any willing buyers throughout the license term; and (2) permit C-Block licensees to use widely-accepted investment tools like options and warrants to attract new capital. Continued reliance upon current C-Block PCS rules will undermine the competitiveness of C-Block licensees who are unable to obtain capital for the build-out and operation of PCS networks under present rules, and yet are expected to compete against huge incumbent cellular and PCS operators like Bell Atlantic Mobile, AT&T Wireless and PCS Primeco.

^{11/} Furthermore, forcing such uninformed decision making is inconsistent with the Commission's approach in similar circumstances. See, e.g., *Lottery Order*, 12 FCC Rcd at 3184; PR Docket No. 89-553, *Order*, 8 FCC Rcd 3974 (1993); *Deferral of Rate of Return Represcription Filings Pursuant to Section 65.102(c) of the Rules*, *Memorandum Opinion and Order*, 3 FCC Rcd 7220, 7222 (CCB 1988). Cf. *Channel 16 of Rhode Island, Inc. v. FCC*, 440 F.2d 266, 275-76 (D.C. Cir. 1971). See, also, *IVDS Order*, DA 98-59, released January 14, 1998.

A. Treat Only Exercised Options And Other "Converted" Interests As Fully-Diluted For Eligibility Purposes - 47 C.F.R. § 24.709(b)(8).

In establishing the C-Block eligibility rules, the Commission provided that unexercised options and convertible ownership interests would be considered as fully-diluted for purposes of determining whether the ownership requirements of the entrepreneurs' block are satisfied. At that time, the Commission was concerned that such interests would give investors "control" over PCS spectrum and potentially would deprive small business entrepreneurs of the ability to control their PCS facilities and businesses.^{12/} However, in light of the dire need to encourage immediate investment in C-Block licensees, and the lack of evidence suggesting that the use of options would affect *de facto* control of the licensees, the Commission should modify its rule to allow C-Block licensees to locate additional strategic partners. The Commission has suspended application of certain C-Block rules when circumstances so dictate for the benefit of the public. Indeed, in applying its PCS rules, the Commission has been called upon in numerous instances to balance competing interests.^{13/}

Moreover, by modifying the eligibility rules so that unexercised options and convertible interests are no longer treated as fully-diluted, the Commission provides the necessary latitude for C-Block licensees to attract investors, while acting in a manner consistent with the treatment of unexercised options and convertible interests in other contexts. For example, the Commission in determining compliance with the general CMRS spectrum cap rules recognizes only exercised ownership options.^{14/} Similarly, the cross-ownership rules governing the ownership of cable television systems and television broadcast stations provide that in calculating attributable interests, the interests of "[h]olders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion

^{12/} See *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 ¶ 95 (stating that call options "would vest an impermissible degree of control in the applicant's so called 'non-controlling' investors").

^{13/} See, e.g., *Order*, Southern Communications Systems, Inc. Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B085, File No. 00551-CW-L-96 (rel. February 4, 1997); *Letter* to Melodie Virtue, Esq., Haley, Bader & Potts, P.L.C. from David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau (rel. January 29, 1997) (granting waiver of Section 24.709(c)(2)(i)); *Order*, Northern Michigan PCS Consortium L.L.C. Request for Waiver of Sections 24.720(f) and (g) of the Commission's Rules (rel. January 29, 1997); *Order*, Waiver of Section 24.813 of the Commission's Rules -- General Requirements for the Broadband Personal Communications Service, PP Docket No. 93-253 (rel. May 19, 1995).

^{14/} See 47 C.F.R. § 20.6 (d) (5) ("Debt and instruments such as warrants, convertible debentures, options, and other interests. . . with rights of conversion to voting interests shall not be attributed unless and until conversion is effected. . .").

to voting interests shall not be attributed unless and until conversion is effected."^{15/} The same is true for the broadcast multiple ownership rules, which use identical language to exclude rights of prospective conversion from the list of cognizable ownership interests.^{16/} In broadcast and cable, the Commission adhered to its policy of treating convertible interests as non-attributable in assessing eligibility for preferences only available for "minority controlled" entities, as -- for example -- in administering its minority tax certificate program and assessing preferences in comparative broadcast proceedings. Furthermore, in assessing compliance with foreign ownership restrictions under Section 310(b), the Wireless Telecommunications Bureau has affirmed that foreign holdings of bona fide debentures, warrants options and other convertible instruments are not included in the analysis. See *GWI PCS, Inc.* 7 FCC Rcd. 6441 (1997) at ¶ 10.

The traditional approach of the Commission with respect to unexercised options and convertible interests is well supported. Because unexercised options and convertible interests do not affect the control of an enterprise, the Commission correctly has not treated convertible interests on a fully-diluted basis. In its discretion, on a case-by-case basis, the Commission has treated convertible interests as fully-diluted in cases where the specific factual circumstances surrounding a particular entity warrant such treatment. For example, in the context of determining whether a specific entity "controls" another, the Commission has adopted a fact-intensive approach, based upon the "special circumstance presented," rather than a formalistic approach.^{17/} In conducting its analysis the Commission has considered: (1) the power to dominate the management of corporate affairs; (2) the ability to elect the members of the entity's board of directors; (3) the ability to direct the entity's finances and personnel; and (4) the circumstances surrounding the formation of the entity.^{18/} Given the history of its treatment of this issue and the critical investment needs of C-Block licensees, the Commission should modify its eligibility rules and treat unexercised options and convertible interests of C-Block entities in the same manner as it treats such interests in the cellular, broadcast, cable and foreign ownership context.

^{15/} See 47 C.F.R. § 76.501 n.2(f).

^{16/} See 47 C.F.R. § 73.3555 n.2(f).

^{17/} See *Stereo Broadcasters, Inc.*, 55 FCC 2d 829, 821 (1975).

^{18/} See *Benjamin L. Dubb*, 16 FCC 274, 289 (1951) (explaining that while having a minority interest is an important element in determining actual control, "power to dominate the management of the corporate affairs" is the chief element); *Metromedia, Inc.*, 98 FCC 2d 300, 303 (1984) (explaining that who determines the make-up of the Board of Directors is relevant when determining where control is situated), *reconsideration denied*, 56 RR 2d 1198 (1984), *appeal dismissed sub nom.*; *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981) (stating that participation in management of the finances, programming, and personnel are "the major indices of control"), *reconsideration denied*, 50 RR 2d 1346 (1982); *Univision Holdings*, 7 FCC Rcd 6672 (1992) (explaining that when dealing with a newly created company the circumstances surrounding its creation and the preparation of the applications are relevant).

B. The Commission Should Allow Licensees To Transfer Licenses To Non-Designated Entities Without Penalty.

The FCC should modify the present election options to allow C-Block licensees in distress the ability to sell their licenses to non-designated entities without incurring the unjust enrichment penalties that presently make C-Block license transfers financially impracticable. Under existing rules, C-Block licensees are permitted to transfer their licenses to non-designated entities following the fifth anniversary of license grant so long as unjust enrichment penalties are paid prior to consummation of the transfer. These penalties include recoupment of any bidding credits used in the auction process and full payment of the cost of the license in satisfaction of the licensee's installment payment obligations.^{19/} The rules undermine attempts by C-Block businesses to attract substantial investors and when in distress, find a willing buyer to operate the licenses.

The benefits of modifying, for a limited time, the application of the unjust enrichment provisions can be achieved without harm to the policies underlying the FCC's designated entity rules. In such circumstances, the public is offered the alternative of placing the licenses in the hands of entities capable of rapidly providing competitive PCS service in the wireless marketplace.

In implementing this option, the FCC should allow C-Block licensees to inform the Commission, six months from the release of the final Memorandum Opinion and Order in this proceeding, that it has decided to sell its licenses to a third party.^{20/} Thereafter, the FCC should afford the C-Block licensees another 180 days to consummate the transaction. Once this occurs, all accrued payments on the licenses will become due and payable and the new licensee will immediately assume all obligations of the original debtor.

III. The FCC Should Modify The C-Block Options Presented In The *Second Report and Order* To Preserve Existing C-Block Investment.

The options adopted in the *Second Report and Order* do not provide adequate relief for C-Block licensees because they do not adequately allow licensees to restructure their businesses. Accordingly, I urge you to adopt rules that respond directly to the conditions described herein.

^{19/} See 47 C.F.R. § 24.711(c); 47 C.F.R. § 24.712(b).

^{20/} The original C-Block licensee would certify that it would not participate in the applicable C-Block reauction, similar to the amnesty option described in the *Second Report and Order*.

A. The Commission Should Modify The Amnesty Rules To Permit Retention Of All Licenses Within An MTA.

The amnesty option adopted in the *Second Report and Order* allows for amnesty only if the C-Block licensee returns *all* licenses won in the initial C-Block auction. The Commission should modify the amnesty option to require a C-Block licensee to return all licenses it holds in a particular MTA. This policy is consistent with the FCC's "disaggregation option," which permits licensees to disaggregate spectrum on an MTA by MTA basis,^{21/} and would allow the initiation of C-Block PCS service quickly.

Any concern that such an approach permits "cherry-picking" is unfounded. C-Block licensees choosing this option will be required to keep all the licenses won in a particular MTA regardless of the economic composite or social or financial demographics of the individual BTAs. Because licensees will choose their retained markets based on existing clusters rather than on the economics of a specific BTA, any threat of cherry-picking is eliminated.^{22/} In addition, this approach is consistent with the policy governing the disaggregation and prepayment options which require disaggregation or prepayment *on a MTA basis*.^{23/} Licensees

^{21/} See *Second Report and Order* at ¶¶ 38-45.

^{22/} Indeed, the FCC did not find that the disaggregation option was problematic because it would theoretically permit licensees to disaggregate in higher-cost MTAs and yet keep all their spectrum in "lucrative" MTAs or would permit licensees to prepay only in low-cost MTAs. See *Second Report and Order* at ¶¶ 38, 67 (allowing disaggregation and prepayment on MTA basis and affirmatively finding such policies do not promote cherry-picking).

^{23/} Also, under the options set forth in the *Second Report and Order*, licensees choosing to disaggregate and return spectrum can apply 50% of their deposit on that spectrum towards payoff of the debt for the retained spectrum, and prepaying licensees can apply 70% of their deposit for licenses they are surrendering to pay for licenses they wish to retain. Only licensees choosing the amnesty option are required to forfeit all payments made to the FCC to date for their licenses --- resulting in a significant loss to the licensees and their investors. So that those selecting any one of the three options are treated similarly and not improperly penalized for choosing to participate in the relief offered in the *Second Report and Order*, the FCC should issue to C-Block licensees securitized bidding credits in the amount of the balances not returned to the C-Block licensee (or not otherwise used under the various options). The "securitized bidding credit" could then be assigned or traded in the secondary market like any other securitized interest. Other parties in this proceeding also have made similar recommendations. See, e.g., Petition for Reconsideration of Airtel Communications, Christensen Engineering & Surveying, CVI Wireless, Knoll Telecommunication Service, Liefer-Marten Architects, URS Greiner Inc., Alpine PCS, Inc., Cellexis International, Inc., MFRI Incorporated; NextWave Telecomm Inc., Omnipoint Corporation, One Step Wireless of America, Prime Matrix Wireless Communications, RFW PCS Inc., Wireless National, and Urban Communications PCS, WT Docket No. 97-82, (November 24, 1997); Oppositions of Duluth and
(continued...)

choosing the amnesty option should be afforded the same choice with respect to the return of their licenses. Unless C-Block investors are able to preserve the value of their investments, or are given an opportunity to recoup a significant portion of the up-front monies, they will find the FCC's disaggregation, prepayment and amnesty options inadequate substitutes to protections traditionally afforded in bankruptcy.

B. The Commission Should Continue To Defer Installment Payments.

Consistent with historic financial practices in the telecommunications industry the Commission may relieve C-Block licensees of the financial burdens imposed by the prevailing unavailability of capital from traditional sources by maintaining deferral of interest payments until the fifth anniversary of the grant of the C-Block licenses.^{24/} In combination with this deferral, the Commission should extend the repayment period from 10 years to 15 years.

Adopting such a moratorium on the payment of interest will free available capital permitting the construction of necessary systems and the commencement of operations, to permit repayment of license debt. Moreover, a deferral would be consistent with the public interest goals cited in the *Second Report and Order* as justifications for the disaggregation, amnesty and prepayment options.

A deferral maintains the integrity of the auction process by providing C-Block licensees with a commercially reasonable relief option due to unforeseeably changed circumstances. This relief is fair to all auction participants because all auction participants were governed by Section 1.2110(e)(4)(ii) of the Commission's rules, which permits restructuring of payment schedules for good cause. By allowing small businesses, minorities and women in the telecommunications industry and eliminating the need for a reauction, a deferral is consistent with the statutory mandate of Section 309(j) and ensures competition and opportunity in the CMRS marketplace on an expedited basis.

^{23/} (...continued)

Third Kentucky; Replies of Alpine PCS, Clear Comm L.P., Hyundai Electronics America, MFRI Incorporated, and Nextwave Telecomm, WT Docket No. 97-82, (January 14, 1998) (recommending under various circumstances an elimination of penalties and full credit for all amounts previously paid).

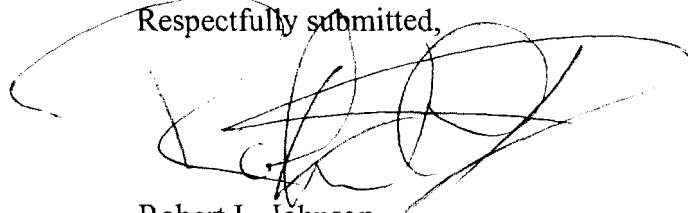
^{24/} Numerous parties to this proceeding and members of Congress recommended a deferral option. Among the parties that put forth such a recommendation was NextWave which also has previously submitted evidence that "financial investments in which interest accrues but is not paid in cash until some future date are commercially reasonable and frequently used by start-up ventures in capital intensive industries." See *NextWave Comments*, WT Docket No. 97-82, filed June 23, 1997 at p. 4 and *NextWave Petition For Reconsideration*, WT Docket No. 97-82, filed November 24, 1997 at p. 23.

IV. Conclusion.

In reconsidering the application of its PCS rules and the C-Block options set forth in the *Second Report and Order*, the FCC's primary goal must be to provide C-Block licensees with meaningful alternatives. Consequently, the C-Block rules and relief options must offer opportunities for efficient and effective license debt restructuring and capital infusions by third parties.

Without meaningful relief, the FCC could face additional bankruptcies in the C-Block. Accordingly, I respectfully request that the FCC grant the relief requested herein and make available to C-Block licensees the tools necessary to raise capital and compete in the increasingly competitive wireless marketplace.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Robert L. Johnson
President, R&S PCS, Inc.
1900 W Place, N.E.
Washington, D.C. 20018

The Honorable William E. Kennard
February 11, 1998
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cc: Commissioner Susan Ness
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